

said bone anchor plate having a bendable base and at least one aperture for receiving a bone anchor fastener for affixing said plate to the patient's bone;

said plate including an elongated central member extending from said base, the distal end of said central member having a first orthodontic appliance integrally formed therewith for receiving wire for attachment to a second orthodontic appliance attached to a patient's tooth;

(b) securely anchoring and affixing said bone plate to the bone with at least one bone anchor fastener so that the base plate is securely attached to the bone and the central member extends through the soft tissue of the jaw adjacent and non-excusal surface of the teeth;

(c) affixing said first orthodontic appliance to at least a second orthodontic appliance attached to at least one tooth in the patient's mouth using orthodontic wire;

(d) adjusting said wire periodically until teeth or bite mal-alignment is corrected as determined by the orthodontist; and

(e) after completion of the orthodontic treatment, disconnecting said first orthodontic appliance from said second orthodontic appliance, and removing said base by removing said bone anchor fastener.

REMARKS

The Examiner's prior rejection of claims 1, 2, 7 and 8 under 35 U.S.C. 103(a) as being unpatentable over DeVincenzo, et al. (5,853,291) in view of DeVincenzo (5,938,437) is respectfully traversed. As the Examiner correctly states, DeVincenzo (291) shows a subperiosteal system. Applicant's invention as claimed in new claims 11-14 describes a system that

is quite different in function and structure than the system shown in DeVincenzo (291) in that applicant's invention is not a sub-periosteal system but instead used a temporary bone anchor that is affixed directly to the patient's bone. As shown in column 2, lines 5 through 13 of the DeVincenzo (291) reference, the DeVincenzo devices encourages overgrowth of bone and it provides increased surface area to facilitate overgrowth of bone onto the top surface. It is applicant's position that the DeVincenzo (291) device teaches away from applicant's device and method in that applicant provides a true bone anchor using a bone anchor screw in conjunction with a thin bone anchor plate that includes the orthodontal appliance attached integrally or rigidly thereto. Applicant's device functions by firmly anchoring the bone anchor plate that includes an orthodontal appliance directly to the bone itself. Therefore, it is applicant's position that the combination suggested by the Examiner which includes DeVincenzo (437) is not suggested nor would be achieve by combining the sub-periosteal bone device shown in DeVincenzo (291) with the DeVincenzo device shown in 437. Such as modification would not truly be suggested nor would arrive at applicant's specifically claimed invention.

The Examiner's rejection of claims 3, 9 and 10 under 35 U.S.C. 103(a) as being unpatentable over DeVincenzo, et al. (291) in view of DeVincenzo (437) as applied to claim 1 and further in view of Kamoni, et al. (5,921,774) is respectfully traversed. The addition of Kamoni (774) does not correct the problem since the base reference of DeVincenzo (291) is completely different in structure and function than applicant's claimed invention. Thus, the combination of Kamoni would not be suggested nor be obvious in conjunction with DeVincenzo (291) and would not, if combined, produce the same structure or functional result.

The Examiner's rejection of claims 4 through 6 under 35 U.S.C. 103(a) as being unpatentable over DeVincenzo (291) in view of Kamoni (774) is respectfully traversed. Again, it

is applicant's position that DeVincenzo (291) does not show the basic teaching nor suggest applicant's specifically claimed method and apparatus since DeVincenzo (291) operates completely differently than applicant's device and is quite different structurally. Thus, the addition of Kamoni (774) would not be suggested and if combined would not produce applicant's claimed invention.

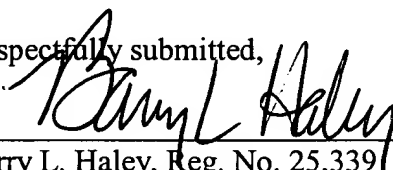
Applicant has cancelled claims 1 through 10 without prejudice and submits new claims 11 through 14 which include apparatus and method claims to more clearly distinguish applicant's invention over the references cited by the Examiner and in particular to clearly distinguish applicant's claimed invention from the DeVincenzo (291) reference which was the basic reference used by the Examiner.

The applicant thanks the Examiner for a telephonic interview on December 12, 2002 with the inventor and applicant, Dr. Payton, applicant's attorney and the Examiner to discuss specifically the differences between applicant's invention and the DeVincenzo 5,853,291 device.

It is believed that claims 11 through 14 as presented are allowable over the references cited by the Examiner.

If there are any additional charges, including extension of time, please bill our Deposit Account No. 13-1130.

Respectfully submitted,


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